Remarks:

Claim 17 is rejected under 35 U.S.C. §112, first paragraph for failing to describe the invention in such a way as to enable one skilled in the art to which it pertains to make and/or use the invention. Specifically, the Examiner objects to the specification for lacking complete deposit information for the deposit of plasmid pMEG-771.

The specification has been amended to include the deposit information, and a copy of the ATCC deposit receipt for the microorganism designated MGN-3394, which harbors the plasmid pMEG-771, is included herewith. In accordance with 37 C.F.R. §1.808, Applicants, through their undersigned attorney, declare that all restrictions upon public access to the deposit will be irrevocably removed upon the grant of a patent on this application and that the deposit will be replaced if viable samples cannot be dispensed by the depository.

Claim 17 stands rejected under 35 U.S.C. §102(b) as being anticipated by Wright et al., GENE, Vol. 49:311-321 (1986). This rejection is unfounded.

Claim 17 depends from claim 16, which depends from claim 15, which depends from claim 6, which depends from independent claim 2. Claim 2 and the intervening claims are allowed. Applicants respectfully point out that since the independent claim and intervening claims are allowed, and since dependent claim 17 incorporates all of the limitations of the independent claim and the intervening claims, dependent claim 17 cannot be anticipated by the prior art of record. As set forth at 37 C.F.R. §1.75(c), "[c]laims in dependent form shall be construed to include all the limitations of the claim incorporated by reference into the dependent claim." Thus, a dependent claim cannot be anticipated unless the claims from which it depends have been found to be anticipated. See *Wahpeton Canvas Company, Inc. v. Frontier, Inc.* 870 F2d 1546 (1989) ("It is axiomatic that dependent claims cannot be found infringed unless claims on which they depend have been found to have been likewise infringed."). This axiom, likewise, applies in the case of anticipation. *Bristol-Myers Squibb Co. v. Ben Venue Labs, Inc.*, 246 F.3d 1368, 1378 (Fed. Cir. 2001) ("that which would literally infringe if later in time anticipates if earlier"). It is improper to reject a dependent claim as anticipated where the claims from which it depends are allowed.

It is believed that the amendment to claim 17 obviates the Office's concerns under 35 U.S.C. §102(b). However, Applicants maintain that the Office's rejection is unfounded, and Applicants amendment to claim 17 should in no way be construed as acquiescing in the Office's reasoning.

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, he is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,

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